

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

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CLAIMANT: USA (Department of Agriculture Forest  
Service)

OBJECTOR: USA (Department of Agriculture Forest  
Service)

**CASE 41U-0068-R-2023**

41U 56226-00  
41U 56227-00  
41U 56229-00  
41U 56230-00  
41U 56232-00  
41U 56233-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. United States of America (Forest Service) is the record owner of claims 41U 56226-00, 41U 56227-00, 41U 56229-00, 41U 56230-00, 41U 56232-00, and 41U 56233-00.

2. The claims were decreed with DNRC issue remarks; all issue remarks must be resolved:

**Claims 41U 56226-00, 41U 56227-00:**

THE FLOW RATE IS MISSING.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

**Claims 41U 56229-00, 56230-00:**

THE FLOW RATE IS MISSING.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

**Claim 41U 56232-00:**

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

**Claim 41U 56233-00:**

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

3. The Forest Service objected to claims 41U 56226-00, 41U 56227-00, 41U 56229-00, 41U 56230-00, and 41U 56233-00. The Objections address the substantive issue remarks decreed on the claims.

4. A deadline was set for the Forest Service to file maps reflecting the proposed point of diversion and place of use modifications and to verify that this Water Master's proposed changes resolve its Objections. On April 24, 2023, the Forest Service filed the maps and confirmed the proposed changes, as described by the Objections, resolve the outstanding issues in the Case. (Doc.<sup>1</sup> 2.00)

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

### Claim 41U 56226-00:

5. The Objection to claim 41U 56226-00 states:

Original POD/POU legal description was incorrect. Forest GIS layer shows stock use located in SWNWSW Section 2 T17N R7W.

The originally claimed flow rate of 0.005cfs or 2.2 gpm should be added to the abstract.

Pursuant to the record, the following changes should be made to claim 41U 56226-00, resolving the issue remarks and the Objection:

Flow Rate: 2.2 GPM

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SWNWSW	SWNW	2	17N	7W	LEWIS AND CLARK

Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: SPRING BOX

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	SWNW	2	17N	7W	LEWIS AND CLARK

### Claim 41U 56227-00:

6. The Objection to claim 41U 56227-00 states:

Original POD/POU legal description was incorrect. Forest GIS layer shows stock use located in NWNENW Section 14 17N 7W.

The originally claimed flow rate of 0.003 cfs or 1.1 gpm should be added to the abstract.

Pursuant to the record, the following changes should be made to claim 41U 56227-00, resolving the issue remarks and the Objection:

Flow Rate: 1.1 GPM

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWNENW	SWNW	14	17N	7W	LEWIS AND CLARK

Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: SPRING BOX

Period of Use: JULY 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENW	SWNW	14	17N	7W	LEWIS AND CLARK

### Claim 41U 56229-00:

7. The Objection to claim 41U 56229-00 states:

Original POD/POU legal description was incorrect. Forest GIS layer shows stock use located in NESESE Section 13 17N 7W.

The originally claimed flow rate of 0.01 cfs or 4.5 gpm should be added to the abstract.

Pursuant to the record, the following changes should be made to claim 41U 56229-00, resolving the issue remarks and the Objection:

Flow Rate: 4.5 GPM

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NESESE	SESE	13	17N	7W	LEWIS AND CLARK

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESE	SESE	13	17N	7W	LEWIS AND CLARK

#### Claim 41U 56230-00:

8. The Objection to claim 41U 56230-00 states:

Original POD/POU legal description was incorrect. Forest GIS layer shows stock use located in NWSENE Section 24 17N 7W.

The originally claimed flow rate of 0.01 cfs or 4.5 gpm should be added to the abstract.

Pursuant to the record, the following changes should be made to claim 41U 56230-00, resolving the issue remarks and the Objection:

Flow Rate: 4.5 GPM

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWSENE	NWSE	24	17N	7W	LEWIS AND CLARK

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	NWSE	24	17N	7W	LEWIS AND CLARK

#### Claim 41U 56233-00:

9. The Objection to claim 41U 56233-00 states:

Original POD/POU legal description was incorrect. USGS topographical map shows spring located in SESWNE Section 13 17N 7W.

Pursuant to the record, the following changes should be made to claim 41U 56233-00, resolving the issue remarks and the Objection:

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		SESWNE	SESE	13+2	17N	7W	LEWIS AND CLARK

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1			SESWNE	SESE	13+2	17N	7W	LEWIS AND CLARK

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The source name issue remark decreed on claims 41U 56229-00 and 41U 56230-00 are notice-type issue remarks. As the Objection have been resolved, no further proceedings are required.

### RECOMMENDATIONS

1. The claims should be modified as discussed in Findings of Facts Nos. 5 through 9.

2. The issue remarks should be removed from claims 41U 56226-00, 41U 56227-00, 41U 56229-00, 41U 56230-00, 41U 56232-00, and 41U 56233-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**DEARBORN RIVER**  
**BASIN 41U**

**Water Right Number:** 41U 56226-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 1, 1899

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 2.20 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF FALLS CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	2	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JULY 1 TO SEPTEMBER 30

**Diversion Means:** SPRING BOX

**Period of Use:** JULY 1 TO SEPTEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWSW	2	17N	7W	LEWIS AND CLARK

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 56227-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 1, 1899

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 1.10 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF EAST FORK FALLS CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENW	14	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JULY 1 TO SEPTEMBER 30

**Diversion Means:** SPRING BOX

**Period of Use:** JULY 1 TO SEPTEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNENW	14	17N	7W	LEWIS AND CLARK

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 56229-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 1, 1899

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 4.50 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF EAST FORK FALLS CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESE	13	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESESE	13	17N	7W	LEWIS AND CLARK

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**DEARBORN RIVER**  
**BASIN 41U**

**Water Right Number:** 41U 56230-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 1, 1899

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 4.50 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF EAST FORK FALLS CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	24	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSENE	24	17N	7W	LEWIS AND CLARK

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 56232-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JULY 16, 1900

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF CUNIFF CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				1	17N	7W	LEWIS AND CLARK

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 56233-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 1, 1899

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG SKUNK CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	13	17N	7W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWNE	13	17N	7W	LEWIS AND CLARK